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Supreme Court of the United States

OCTOBER TERM, 1934.

No. 625.

REALTY ASSOCIATES SECURITIES CORPORATION and REALTY ASSOCIATES, INC.,

Petitioners,

vs.

EUGENE F. O'CONNOR, Jr., *et al.*,

Respondents.

REPLY BRIEF OF PETITIONER, REALTY ASSOCIATES, INC.

JAMES N. ROSENBERG,
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REALTY ASSOCIATES, INC.

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POINT: Illuminating on the question of construction of Section 40 is the Report of the Committee on the Judiciary of the House of Representatives which recommended the bill enacted into law as the Bankruptcy Act of 1898. This report shows that the intention of Congress was to limit fees and to keep expenses of administration down... 1

Conclusion 2

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H. R. Rep. 65, 55th Congress Second Session (1898). 1

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In final analysis the one and only question here presented is the meaning of Section 40 of the Bankruptcy Act —the meaning which Congress intended to ascribe to that section. Bearing upon and illuminating what the intent of Congress was in dealing with the subject of fees, we refer to H. R. Rep. 65, Fifty-fifth Congress, Second Session (1898), pp. 44 et seq.

> "One of the chief sources of discontent with the last bankruptcy law was the enormous expenses of administering estates under its provisions. Not only were large amounts paid from estates to officers, but these amounts were paid in a way that encouraged delays in the enforcement of the law. • • •
>
> "The costs of administering estates under the bill we recommend are very reasonable in amount, and are to be so computed and paid that every officer financially interested in the estates will in effect be

employed to not only secure prompt results, but as large dividends as possible—that is to say, the referee and trustee will not receive any compensation from an estate until its administration is concluded, and the commissions they receive will be computed not upon the total outgo of the estates, but on the amount actually paid in dividends and commissions. The clerk will receive but a single fee, which will be paid to him in advance, and he therefore will be anxious to have the estate administered as quickly as possible, as he can not have any interest in delays in the administration or in piling up expenses.

"The expenses are limited by the bill we recommend to those which are actual and necessary, and it is required that they shall be reported in detail under oath to the court.

"The committee is confident that the bill it recommends will not be found objectionable when it becomes a law because of the amount which will be expended in its administration." (pp. 46, 7)

We submit that the intention of Congress as so expressed is carried out by awarding the Referee in the case at bar the amount which Judge Galston in the district court allowed and that to award the Referee the larger amount which the Circuit Court of Appeals permitted thwarts and goes counter to the intention of Congress.

Conclusion.

The decree of the Circuit Court of Appeals should be reversed and the order of the District Judge affirmed.

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